

CARL W. ST. CLAIRE

IBLA 81-574

Decided April 5, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims CA MC 56977 through CA MC 56985 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper Bureau of Land Management office before such date.

APPEARANCES: Carl W. St. Claire, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Carl W. St. Claire appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 26, 1981, declaring

certain mining claims listed in the appendix abandoned and for failure to file evidence of assessment work or notices of intention to hold the claims as required by 43 CFR 3833.2-1, issued pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §1744 (1976). 1/ BLM stated that annual evidence of assessment work or notices of intention to hold the mining claims were due in the BLM office on or before December 30, 1980. BLM received the proof of labor notices on January 2, 1981.

On appeal appellant asserts that his yearly notice of assessment work was mailed to BLM's office in Sacramento, California, on December 24, 1980. He says it was not mailed until this date because he had been ill. He further asserts that he has spent \$150,000 on the property and having them declared abandoned would affect his future plans.

[1] The owner of an unpatented mining claim, located prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, evidence of annual assessment work or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Marvin G. Stuck, 60 IBLA 197 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In absence of evidence that BLM did receive timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly declared the claims abandoned and void. Marvin G. Stuck, *supra*; M.D.C., Inc., 57 IBLA 35 (1981). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); *see Western Mining Council v. Watt*, 643 F.2d 618, 628 (9th Cir. 1981), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981).

1/ BLM's decision is addressed to Carl St. Claire, et al., at the record address for appellant and Carl V. St. Claire who is listed as co-owner of the claims. The co-owner has not appealed to this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX

<u>Name of Claim</u>	<u>Date of Location</u>	<u>BLM Serial Number</u>
Carla Jean #1	January 5, 1966	CA MC 56977
Carla Jean #2	January 15, 1966	CA MC 56978
Carla Jean #3	January 15, 1966	CA MC 56979
Carla Jean #4	February 18, 1966	CA MC 56980
Carla Jean #5	February 18, 1966	CA MC 56981
Carla Jean #6	February 18, 1966	CA MC 56982
Joy Mary #1	September 23, 1970	CA MC 56983
Joy Mary #2	September 23, 1970	CA MC 56984
Joy Mary #3	September 24, 1970	CA MC 56985

